

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-1590-2021

Reserved on: 01.08.2023

Pronounced on: 08.08.2023

Gurpreet Singh and others

.....Petitioners

Versus

Director Land Records, Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. S.S.Salar, Advocate
for the petitioners.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. S.D.Sharma, Senior Advocate with
Mr. Varun Anand, Advocate
for respondents No. 2 to 5.

SURESHWAR THAKUR, J.

Factual Background.

1. Through the instant petition, a challenge is made to Annexure P-3. Annexure P-1 is an application/ petition made by co-respondents No. 2 to 5 herein, petitioners therein, under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (As applicable to Haryana) (hereinafter for short called as the 'Act of 1948'), thus before the competent Authority concerned.

2. Annexure P-1 became instituted on 26.05.2015. In the said petition, the petitioners therein, respondents No. 2 to 5 herein, pleaded

that before the completion of the consolidation operations in the *mohal*

concerned, their ancestors had purchased 27 bigha 5 biswa 10 biswansi land through a sale deed dated 24.06.1957 but mutation of the same could not be sanctioned because at that time the consolidation operations were underway. After finalization of the consolidation operations, new record was prepared in the name of the persons who were owners prior to the consolidation. That subsequently the legal heirs of the vendors filed a petition for partition of 58 kanal 18 marla land praying that they be given possession as per their share. That on verification of record, the petitioners therein, respondents herein, came to know that the consolidation department has wrongly shown them as the owner of $\frac{1}{2}$ share in the new allotted area in lieu of purchase made by them, whereas, they had purchased a major portion of the land from the predecessors-in-interest of the respondents therein, petitioners herein.

3. On the said petition (Annexure P-1), the impugned order Annexure P-3 became passed on 18.03.2020 by the Director, Land Records, Punjab, Jalandhar (exercising the powers under Section 42 of the 'Act of 1948').

4. Un-contestedly the consolidation operations concluded in the *mohal* concerned, in the year 1960, visibly so as then the *misal haqiyat* became drawn. The core controversy which emerges amongst the contesting litigants, relates to the validity of the deed of conveyance executed inter-se the predecessors-in-interest of the petitioners herein, thus with the predecessors-in-interest of respondents concerned. The said sale deed was executed in the year 1957. Necessarily, it is not under contest that the sale deed (*supra*) were but executed during the

phase when the consolidation operations were underway in the *mohal*

concerned. Therefore, since on commencement of consolidation operations in the *mohal* concerned, and upto their valid termination, the entire lands which are subjected to consolidation operations, thus are thrown into a common hotch potch, thus through an order of mutation being recorded by the consolidation officer concerned. Resultantly the assignment of specific khasra numbers in the sale deed executed inter-se the concerned, in the year 1957, is but patently flawed. The reason being that when obviously the consolidation operations were yet underway, thus prima facie the above could not have been done nor obviously prima facie the said sale deeds, could be construed to be, as such assigning any right, title and interest rather in those specific khasra numbers which were never in existence in the year 1957, especially when then the consolidation operations were yet underway.

5. The reason for making the above conclusion is embedded in the factum, as stated (*supra*), that for facilitating the purpose of consolidating the disparate tracts of lands, thus on commencement of consolidation operations, rather they are thrown into a common hotch potch hence through an order of mutation. Resultantly for ensuring that such scattered small parcels of land(s) of the estate holders concerned, rather falling in different areas, or in different portions, thus become consolidated on to their major portions. In the said exercise after receiving the report of the *Musavra Committee*, the consolidation officer but also in terms of the apposite valuations, besides in terms of the allotable area as per the pre-consolidation records, thus proceeds to consolidate those scattered and disparate areas of the estate holders concerned, rather onto a consolidated tract of land, hence by adding the

estate holdings onto the major portion of the apposite estate holders.

6. In consequence, since in the pre-consolidation records, the co-respondents concerned, were not holding any right, title and interest over the disputed lands, but when they rather acquired such purported right, title and interest, only on executions in their favour by their respective vendor, hence of sale deed(s), which but became executed when the consolidation operations were underway, and that too with assignment(s) therein of specific khasra numbers which were never then in existence. Resultantly when obviously the entire tracts of land of all the estate holders concerned, were thrown into a common hotch potch, through an order of mutation being made by the consolidation officer concerned. Therefore, as stated (supra), no right, title and interest, prima facie, thus was validly alienable qua any such specific khasra numbers, given theirs then not being in existence. May be areas of lands acquired through the sale deed(s) drawn qua the estates of the vendor estate holders, but to the extent of their holdings in the pre-consolidation records, thus could be entered by the consolidation officer concerned, and thereby allotment thereof rather could be made to the vendees concerned. However, for best known reasons, even the said lawful manner of allotments was never adopted at the instance of the consolidation officer concerned.

7. The effect of the above discussion, is that, in the finalized consolidation scheme, if there was any irreverence to the said deed of conveyance, thereby the said irreverence was incurable, through an institution of an application/petition under Section 42 of the 'Act of 1948', by the aggrieved before the consolidation officer concerned.

the factum, that if there was any acquisition of any vested right, title and interest in the co-respondents concerned, over the lands which were then the subject of consolidation operations, then the controversy appertaining to the validity of such acquisitions, was to be raised and also was required to be decided by the Civil Court concerned, through a declaratory suit being filed before the authority concerned, as constituted under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter for short called as 'the PVCL Act').

9. The fortifying reason for forming the above inference further stems, from the factum, that the jurisdiction conferred under Section 42 of the 'Act of 1948', is an extremely limited and truncated jurisdiction, and is well exercisable rather only for correcting clerical or arithmetical mistakes, and/or, for undoing any under allotments to the estate holders, thus when such under allotments are premised on the consolidation officer in his preparing the finalized consolidation scheme, thus his irrevering the pre- consolidation records. Moreover, the said jurisdiction, can be aptly exercised only, when the imperative duty cast upon the consolidation officer, to create a *revenue rasta*, thus for the benefit of all the estate holders, rather becomes omitted to be done, and/or also can be exercised, when despite a *revenue rasta* becoming created, yet some of the estate holders concerned, obstructing or resisting the user of such a *revenue rasta*, by the apposite estate holders concerned, whereupon whom the exercisings of rights of easement thereons, is created, by the consolidation officer concerned.

10. Tritely the said jurisdiction cannot be exercised in respect of assigning validity to a flawed sale deed, which became executed

during the phase when consolidation operations, yet were underway in

the *mohal* concerned, and which for reasons as above stated, did not create any valid right, title and interest, in the vendees thus to, on culmination of the consolidation proceedings, rather stake claim of allotments of lands being made in their favour, by the consolidation officer concerned. In other words, the controversy with respect to the invalidity of assignment(s) made by the consolidation officer concerned, in the apposite *misal haqiyat*, as arose from a purported sale deed becoming executed during the phase when the consolidation operations were underway in the *mohal* concerned, did visibly fall within the jurisdiction of the civil Court concerned, and was not required to be exercised by the authority constituted under the 'Act of 1948', as has been untenably done.

11. Necessarily, and reiteratedly any right, title and interest, as became vested in the vendees concerned, thus through the sale deeds concerned, rather in the estates concerned, was through instituting a declaratory suit, thus before the civil Court concerned, or before the Authority constituted under 'the PVCL Act'. The said remedy remained un-recoursed at the instance of the co-respondents concerned, petitioners therein. Contrarily, they chose to adopt the remedy under Section 42 of the 'Act of 1948', to seek bestowment(s) upon them of the disputed lands despite *prima facie* for all the reasons (*supra*), their not holding any right, title and interest qua any specific khasra number in the lands which were yet under consolidation operations.

12. Furthermore, the jurisdiction under Section 42 of the 'Act of 1948' has to be exercised within a reasonable time, whereas, with the consolidation operations evidently concluding in the *mohal* concerned,

in the year 1960, and yet application Annexure P-1, being filed for the

above ill purpose in the year 2015, thus resulting in the making of the impugned order (Annexure P-3). Resultantly the above delay renders the exercising of jurisdiction by the Authority, who made Annexure P-3, thus on an belatedly instituted besides an ill recoured motion comprised in Annexure P-1, obviously but being hit by the stain of delay(s) and latches. Therefore, even on the above score, the impugned order is flawed and is required to be quashed and set aside.

Final Order

13. In aftermath, this Court finds merit in the writ petition, and, with the above observations, the same is allowed. The impugned order Annexure P-3 is quashed and set aside, leaving liberty to the concerned to avail such permissible remedies as prescribed in law.

(SURESHWAR THAKUR)
JUDGE

08.08.2023

kavneet singh

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No